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a recovery thereunder for an occasional nuisance caused in the manner alleged in the declaration.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 113, 114; Dec. Dig. § 48.* 10 Va.-W. Va. Enc. Dig. 541.]

4. Nuisance (§ 49*)—Private Nuisance—Continuous Nuisance—Recovery.—A plaintiff suing for present and future damages caused by a continuous nuisance may show permanent injuries.

[Ed. Note.—For other cases, see Nuisance, Cent. Dig. §§ 115-117; Dec. Dig. § 49.* 10 Va.-W. Va. Enc. Dig. 542; 14 Va.-W. Va. Enc. Dig. 788; 15 Va.-W. Va. Enc. Dig. 747.]

5. Appeal and Error (§ 173*)—Questions Reviewable—Theory of Case in Trial Court.—Where the court and the parties in an action for a nuisance limited the recovery, if any, to the damages sustained prior to the commencement of the action, and the court without objection charged that no damages could be awarded unless suffered within five years, defendant was estopped on appeal to deny that plaintiff could maintain successive actions for the damages he might suffer from time to time, and he could not rely on limitations.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1079-1089, 1091-1093, 1095-1098, 1101-1120; Dec. Dig. § 173.* 5 Va.-W. Va. Enc. Dig. 282.]

Error to Law and Chancery Court of City of Norfolk.

Action by G. Benson Ferebee against the Virginia Railway & Power Company. There was a judgment for plaintiff, and defendant brings error. Affirmed.

Williams, Tunstall & Thom, of Norfolk, and *H. W. Anderson*, of Richmond, for plaintiff in error.

Braxton & Eggleston, of Richmond, *Thos. W. Shelton* and *Claude M. Bain*, both of Norfolk, for defendant in error.

ROSENBERG *v.* UNITED STATES FIDELITY & GUARANTY
CO. OF BALTIMORE, MD.

June 12, 1913.

[78 S. E. 557.]

1. Appearance (§ 24*)—Effect—Defects in Service—"Submission to Jurisdiction."—An appearance of defendant to the action or a general appearance waives all defects in the process, and constitutes a submission by defendant to the jurisdiction of the court.

[Ed. Note.—For other cases, see Appearance; Cent. Dig. §§ 118-143; Dec. Dig. § 24.* 7 Va.-W. Va. Enc. Dig. 677; 14 Va.-W. Va. Enc. Dig. 116; 15 Va.-W. Va. Enc. Dig. 82.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

2. Appearance (§ 24*)—What Constitutes—Motion to Dismiss—Want of Jurisdiction.—Where defendant appeared and moved to dismiss the action for want of a declaration, the court having jurisdiction of the subject-matter, a subsequent objection to the jurisdiction for irregularities affecting the process merely was waived.

[Ed. Note.—For other cases, see Appearance, Cent. Dig. §§ 118-143; Dec. Dig. § 24.* 1 Va.-W. Va. Enc. Dig. 673; 14 Va.-W. Va. Enc. Dig. 115; 15 Va.-W. Va. Enc. Dig. 81.]

Error to Circuit Court of City of Norfolk.

Action by Max Rosenberg against the United States Fidelity & Guaranty Company of Baltimore, Md. Judgment for defendant, and plaintiff brings error. Reversed and remanded.

Jeffries, Wolcott, Wolcott & Lankford, of Norfolk, for plaintiff in error.

Baird, Swink & Moreland, of Norfolk, for defendant in error.

HILL et al. v. SAUNDERS et al.

June 12, 1913.

[78 S. E. 559.]

1. Mortgages (§ 38*)—Deed as Mortgage—Presumption—Evidence.—The presumption that a deed absolute on its face is what it purports to be must be overcome by clear, unequivocal, and convincing evidence.

[Ed. Note.—For other cases, see Mortgages, Cent. Dig. §§ 108-111; Dec. Dig. § 38.* 10 Va.-W. Va. Enc. Dig. 36; 14 Va.-W. Va. Enc. Dig. 736; 15 Va.-W. Va. Enc. Dig. 698.]

2. Equity (§ 73*)—Deed as Mortgage—Suit to Declare—Laches—Loss of Evidence.—Suit to have a deed declared a mortgage is barred by laches; complainants having, with conscious knowledge of the situation, waited till after death of all the principal actors in the transaction, loss of whose testimony would make any conclusion reached by the court necessarily conjectural and founded on random guess.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 222-224; Dec. Dig. § 73.* 9 Va.-W. Va. Enc. Dig. 97.]

Appeal from Circuit Court, Culpeper County.

Suit by the widow and heirs of Edward B. Hill, deceased, against the personal representatives and devisees of C. A. Saunders, deceased. Bill dismissed, and complainants appeal. Affirmed.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.